IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 1905 of 2003()

AGAINST THE JUDGEMENT/ORDER IN CRLP.529/2003 Dated 06/11/2003
CC.44/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI

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APPELLANT: COMPLAINANT

K.ARUMUGHAN, S/O. KRISHNAN,
KAPPATT HOUSE, P.O.AYIROOR, PONNANI TALUK.

BY ADV. SMT.K.V.BHADRA KUMARI

RESPONDENTS: ACCUSED & RESPONDENT

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1. K.G.PRABHAKARAN, S/O. GOPALAN NAIR,
MARATH VEEDU, ERAMANGALAM P.O.

2. C.N.ARUMUGHAN S/O. NARAYANAN,
CHEMBUYIL VEEDU, AYIROOR P.O.

3. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI.P.CHANDRASEKHAR FOR R1 & R2
P.P.SRI.PUZHAKKARA MUHAMMED FOR R3

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 3-7-2007 , THE COURT ON 03/07/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 1905 of 2003

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Dated this the 3rd day of July, 2007

JUDGMENT

The appeal is filed by the complainant against the judgment in C.C.No.44/1999 on the file of the Court of the Munsiff-Magistrate, Ponnani. The complaint was filed under section 138 of the Negotiable Instruments Act alleging that respondents 1 and 2 borrowed an amount of Rs.75,000/- from the appellant and they issued a cheque for Rs.75,000/- and when the cheque was presented for encashment, the same was dishonoured stating that the payment was stopped by the drawer. After complying the statutory formalities, the appellant filed the complaint. On the side of the prosecution, PW1 to PW4 were examined and Exts.P1 to P11 were marked. After completing the prosecution evidence, respondents 1 and 2 were questioned under section 313 Cr.P.C. They denied the entire allegation in the complaint and stated that they had not received any amount from the appellant as alleged in the complaint. They also stated that the appellants and others were running a partnership business and there arose problem of settling the liabilities of the partnership and the difference between the

partners were settled in the presence of mediators and in the mediation two blank cheque leaves were given by respondents 1 and 2 and they were entrusted with the mediators and later the payment was made by the appellant and one of the cheque leaves was misused by the appellant for filing the complaint. To prove the case, DW1 and DW2 were examined and Ext.D1 was marked. After considering the entire evidence, the trial court found that the appellant had failed to establish the offence punishable under section 138 of the Negotiable Instruments Act against respondents 1 and 2 and hence respondents 1 and 2 were acquitted.

2. This Court heard learned counsel for the appellant and learned counsel for the respondents.

3. The contention of the appellant is that the trial court ought to have found that there is presumption under section 139 of the Negotiable Instruments Act that unless the contrary is proved, the holder of the cheque received. The further contention of the appellant is that the signature in Ext.P1 cheque has been admitted by the drawer and hence it is the duty of the court to presume that there was existence of consideration. The next contention of the the learned counsel for the appellant is that the trial court had not appreciated the evidence of PW1 and PW4 with regard to the debt of Rs.75,000/- borrowed by respondents 1 and 2. But, the appellant had

not proved the transaction which led to the issuance of Ext.P1 cheque. Whereas, respondents 1 and 2 had set up a case that there was a partnership business between the appellant and respondents 1 and 2 and that partnership business was closed and through mediation because of the difference of opinion between the appellant and other partners. In the mediation DW4 was also interfered and matter was settled and for settling the dispute DW1 had accepted two blank cheques from respondents 1 and 2 and subsequently, cheques were handed over to one of the partners of the firm and out of the two cheques one was used for filing the complaint. The trial court found that the appellant failed to prove that Ext.P1 cheque was issued by respondents 1 and 2 in discharging of any existing debt due to him. In the above circumstances, presumption under section 139 is rebutted by respondents 1 and 2 by adducing evidence to the effect that the cheque in question was issued not in discharge of any legally enforceable debut as contemplated under section 138 of the Negotiable Instruments Act

4. In the above circumstances, this Court is of the view that the judgment under appeal requires no interference by this Court. Hence, the appeal fails and stands dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. 11 of 1999

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Judgment
31-5-2007